

(2014) 03 KAR CK 0140

In the Karnataka High Court

Case No : Writ Petition No. 3762 of 2013 (EDN-RES)

Army Public School

APPELLANT

Vs

The Karnataka State

RESPONDENT

Date of Decision : 24-03-2014

Acts Referred:

Right of Children to Free and Compulsory Education Act, 2009 — Section 17(1), 3, 31(1)(b), 31(1)(c)

Citation : (2015) 1 AKR 50 : (2014) 4 KarLJ 568

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : M.C. Ravi Kumar, Advocate for the Appellant; B. Veerappa, Additional Government Advocate and H.T. Vasanth Kumar, Advocate for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—Heard the learned Counsel for the petitioner and the learned Counsel for the respondents. The petitioner is said to be an Army Education Welfare Society registered under the Societies Registration Act, 1860 (21 of 1860) with the Registrar of Societies, Delhi Administration, Delhi, which had recognised to treat the erstwhile Parachute Regiment Training Centre School as "Army Public School" as per its guidelines. It runs more than 130 schools throughout India and it is governed by the norms framed by the Society. The School has been affiliated to the Central Board of Secondary Education (CBSE), New Delhi and it has acknowledged and granted necessary permission for change over from the old Parachute Regiment Training Centre School, to "Army Public School" with effect from 1-4-2012. The students were directed to collect the old admission fee already paid and the Security Deposit and to pay the new admission fee as per the Army Public School Regulations. There was hence no question of collecting fresh admission fee. There was a communication made by the CBSE on 4-8-2012, not to collect any fresh admission fee. This was replied by the School Authorities offering an explanation as to the manner in which the earlier fee paid was being adjusted towards the current admission fee on the

change over from the Parachute Regiment Training Centre School to the Army Public School.

It is however stated that the parents of 42 students had refused to collect the admission fee and the refundable security deposit.

2. It transpires that the parents representing 42 students had sought to question the action on the part of the school in making adjustment of the admission free by way of a writ petition in W.P. No. 15296 of 2009. There were several other writ petitions filed on the same ground and also challenging the exemption conferred under the Karnataka Education Act, 1983 exempting the schools affiliated to the CBSE syllabus from the provisions of the KE Act and therefore, taking themselves out of the purview of the fee structure prescribed by the Government of Karnataka. The petitions were allowed quashing the amendment to the KE Act, granting exemptions to schools affiliated to the CBSE. The writ appeals were filed challenging the orders of the learned Single Judge in W.A. No. 2450 of 2011 and connected appeals, which are said to be pending consideration before a Division Bench of this Court and by virtue of those proceedings pending, the fee has remained unpaid and the dispute has not been resolved insofar as the said 42 students are concerned.

3. Be that as it may. It transpires that the parents of the students, who had rebelled against the arrangement as regards the admission fee, as aforesaid, had then approached the Karnataka State Commission for Protection of Child Rights with two complaints, dated 27-12-2012 and 4-1-2013, which read as follows:

"To:

Dated 27-12-2012

Chair Person,

Karnataka State Commission for

Protection of Child Rights,

Bangalore.

Dear Sir/Madam,

Sub.: 42 students from classes 1 to 10, debar notice issued by Army Public School, PRTC, J.C. Nagar, near Mekhri Circle, Bangalore-06 for opposing readmission fee.

The Parachute Regiment School changed its name to "Army Public School" and started to collect re-admission fee of over Rs. 21,000/- from all the existing and continuing students. Some of the parents questioned the school of their unfair policies and have obtained information from CBSE on clarification of re-admission procedures. The CBSE Board in its letter dated 4th September, 2012 has clearly started not to collect any fresh admission fee from students on account of change of name of the School.

The School Authorities did not bother to adhere to the direction of CBSE, but went on to issue DEBAR notice to 42 students, whose parents are protesting against the readmission fee and illegal activities of the school. The school has indulged in serious violation of all laws, intensified their victimization methods upon innocent children, causing tremendous agony and pain to both parents and to their children studying in the school.

We have paid the entire fee of our children upto date to the School Bank Account as done earlier.

Since, we have challenged the School of its irregularities and illegal activities in Hon"ble High Court of Karnataka and the matter is pending. Meanwhile, the School has intensified the victimization actions towards our children, our children are not allowed to participate in any extra curricular activities, denied marks card, refused to issue ID cards. Now, they have issued letter to expel out children from the School.

From 18th December onwards, the School Authorities have put our children outside the school by not allowing them to attend their classes. Later on pursuance by the parents they were let to attend the classes. Such types of harassments are thrust upon our children by the school. The children are traumatized, they are been treated unequally with other children. The Act of the School is illegal and they are doing things against the Right of Children to Free and Compulsory Education Act, 2009 (RTE) and Commissions for Protection of Child Rights Act, 2005.

We request your good offices to look into the matter and ensure our children education is not been interrupted, by the school. The School Authorities must give up its adamant stand to debar or expel the 42 students from the school.

Education is a fundamental right of every citizen of India under RTE Act.

Thanking you,

Yours truly, Sd/- Parents.

To: Dated 4-1-2013

The Commissioner of Public Instruction, K.R. Circle, Bangalore.

Dear Sir,

Subject: Our children being issued with debar notice, harassed, ill-treated, insulted, humiliated mentally tortured by the Principal and Teachers of Army Public School, PRTC, J.C. Nagar, Bangalore-560 006.

The School Management has violated the orders of CBSE regard to re-admission fee High Court of Karnataka orders and directions of child rights commission.

As per the directions of the Hon"ble High Court of Karnataka we have paid the fees regularly and it is credited to schools bank account as done earlier.

When the parents protested against the school managements unfair and illegal activities both on re-admission fee and also unilaterally hiked fee, the school management targeted those parents" children and started to mentally and physically harass every day, the following are the complaints:

1. Our children are not allowed to participate in any of the extra curricular activities.
2. The school has put up a banner at its premises branding both parents and their children defaulters and mentioning their names.
3. The children"s are been ignored during the class hours intimidating them and demotivating them to give up their education and compelling their parents to pay the hiked fee.
4. Our children"s are not issued their ID cards.
5. Our children are not issued marks cards despite the High Court orders to issue marks cards.
6. Our children"s are being humiliated by the principle during the morning by calling their name as defaulters and making them to stand separately from the other students.
7. Our children have been issued with debar notice and from 2-1-2013 the school is using Army Jawan"s to detain at the school gate threatening them not to enter the school under the instruction of the Principal.
8. On 3-1-2013 our children"s were not allowed to enter the school and was detained and made them to stand in playground for over 2 hours under the sun.
9. One Teacher by name Mrs. Roma have abused our children using foul language with a remark "shameless students and parents you have not paid the fee. If you cannot pay the fee get out of the school".

The school is being working contrarily to law and have no fear of any authorities or Court. Their arrogant and adamant methods are been thrust upon our children their brutality are been exercised on our innocent children. Though the child rights commission has directed the school management in not to indulge in such activities. It seems that all their instructions are fallen on the deaf ears of the school management.

We request you to take necessary and appropriate actions as deem fits in the interest of Right to Education of our Children.

Yours truly, Sd/- Parents".

4. Pursuant to which, the Director (Primary Education) had called upon the

Chairman of the School to show cause as to why action ought not to be taken in terms of Annexure-P, which reads as follows:

"GOVERNMENT OF KARNATAKA DEPARTMENT OF PUBLIC INSTRUCTIONS,
Nrupatunga Road, Bangalore

No. C7(2) P.S.A./Anu Dooru/2/2012-2013

Dated 7-1-2013

By Registered Post

NOTICE ASKING REASON

Sub.: An answer required for complaint received by 42 students and their parents against Army Public School, Parachute Regiment Training Center, J.C. Nagar, near Mekhri Circle, Bangalore-560 006.

Ref.: Parents and students complaint letter dated 27-3-2012, 6-8-2012, 30-10-2012 and 4-1-2013.

With reference to the above subject and as stated in the reference 42 students and parents have given a complaint on 3-1-2013 that you are not allowing them to enter into the school premises and also you are punishing them both physically and mentally. And when we enquired about these issues are all self-explanatory. As per your letter dated 27-8-2012 as mentioned in para 5 you are waiting for the judgment from High Court.

We have noted that you have instructed the students to pay the hike in fees and if not, not to attend the classes with effect from 2-1-2013. While changing the name of the school from Parachute Regiment School to Army Public School, the CBSE Board has given clear instruction that not to collect the readmission fees from the students. The parents have stated that, you have punishing these 42 children both mentally and physically as well as you are not allowing them enter into the school, not allowing them to participate in school extra curricular activities, refuse to issue the school identity card and in the time of school prayer, the children were asked to stand separately.

As a Management Committee you have stated that still the Court final judgment is pending towards collecting of fees. As oppose to the law you are forcing the students and parents to pay the hiked fees. And as stated above you are punishing the children both mentally and physically, such kind of behaviour is showing the oppose to Section 17(1) of the Right of Children to Free and Compulsory Education Act, 2009. With all these matters, it is true that you are opposing to the rights of children.

Therefore, will all the above reasons why we should not take permission issued by the State Government to run the CBSE syllabus (NOC)? With this matter you are requested to give an explanation within 7 days of receipt of this letter or otherwise in our own discretion we will take the necessary action as per rules.

Sd/- Director, Primary Education.

To: Chairman, Army Public School, Parachute Regiment Training Center, J.C. Nagar, Mekhri Circle, Bangalore-560 006".

5. Further, the Commission had opined that the school had denied the rights of the children and therefore directed the school to correct its ways and passed the following interim order:

"Karnataka State Commission for Protection of Child Rights,
4th Floor, Krushi Bhavan, Nrupathunga Road, Rani Channamma Circle,
Bangalore-560 002.

Dated 11-1-2013

INTERIM ORDER

The parents of Army Public School, PRTC, have filed complaint before this Commission vide letter dated 27-12-2012 and 4-1-2013, stating that the school management has debarred 42 students from the school, further the school management has harassed, ill-treated, insulted, humiliated, discriminated mentally tortured, further they contend that the school management has violated the orders of the CBSE, regarding to re-admission fee. As per the direction of the Hon"ble High Court of Karnataka we have paid the fees regularly. The parents also protested against the School Management unfair and illegal activities of both on re-admission fees and also un ill-treating hiked fee, the school management targeted those parents children and started to mentally, physically harassing every day. Further they have stated as follows:

1. Our children are not allowed to participate in any of the extra curricular activities.
2. The school has put up a banner at its premises branding both parents and their children as fee defaulters and mentioning their names.
3. The children"s are been ignored during the class hours intimidating them and demotivating them to give up their education and compelling their parents to pay the hiked fee.
4. Our children"s are not issued their ID cards.
5. Our children are not issued marks cards despite the High Court orders to issue marks cards.
6. Our children"s are being humiliated by the Principal during the morning assembly by calling their name as Fee defaulters and making them to stand separately from the other students.
7. Our children have been issued with debar notice from 2-1-2013, the school is using Army Jawans to detain at the school gate threatening them not to enter

the school under the instructions of the Principal.

8. On 3-1-2013, our children were not allowed to enter the school and was detained and made them to stand in playground for over 2 hours under the sun.

9. One teacher by name Ms. Roma, have abused our children by using foul language with a remark "shameless student and your parents have not paid the Fee, if you cannot pay the Fee, get out of the School". The school is being working contrarily to law and have no fear of any authorities or Court. There are again the adamant method are been thrust upon our children their brutality are been exercised on our innocent children. Though the Child Rights Commission has directed the school management in not indulge in such activities. It seems that all their instructions are fallen on the deaf ears of the school management. Hence, they are requested this Commission to take necessary and appropriate action as deemed fit in the interest of right to education of their children.

Further the above 42 students have also filed complaint before the jurisdiction Police Station, in respect of violation of Child Rights and the Principal of the School Management and the Teachers are harassing and abusing the students stating that, you have not paid the re-admission fee. The copies of the same have been forwarded to this Commission.

The parents of the Army Public School, PRTC, have produced the following documents along with their complaint:

1. The Central Board of Secondary Education has issued Letter No. CBSE/Aff/830052/464821, dated 4-9-2012, to School, not to collect the fresh admission fee from the students.
2. Copy of the order passed in W.P. No. 15296 of 2009.
3. Enquiry report dated 21-7-2012, conducted by B.E.O. North-3.
4. Committee enquiry report dated 12-9-2012 and letter dated 13-9-2012 by DDPI North to Director of Public Instructions to take necessary action.
5. Copy of the interim order passed by the Hon"ble High Court of Karnataka in W.P. No. 5271 of 2012 and W.P. No. 35431 of 2011.
6. Copy of the show-cause notice dated 7-1-2013, issued by Director of Public Instructions.

After considering the facts and circumstances and perused the documents produced by the Parents of Army Public School, PRTC, the following points are raised:

In the first document, the CBSE Board, in its Letter No. CBSE/Aff/830052/464821, dated 4-9-2012, has clearly directed, the Army Public School, PRTC not to collect the Fresh Admission Fee from the students. In the second document, the copy of the order passed in the Writ Petition No. 15296 of 2009, the Hon"ble High Court of Karnataka, has directed the School to fix the

school Fee in accordance with Karnataka Education Act and Rules. The school management has preferred an appeal challenging the order passed in the said writ petition, no stay is granted, hence the impugned order passed in the said writ petition is still operating. Hence, the Army Public School, PRTC is not entitled to collect the fresh hiked fee and admission fee. The 42 students have debarred from the school, for the reason, that the students have not paid the fresh admission fee and hiked fee, which is contrary to Law. The RTE Act has become the fundamental rights. As per Section 3 of the Right of Children to Free and Compulsory Education Act, 2009, every child of the age of 6 to 14 years shall have a right to free and compulsory education in a neighboring hood school till completion of their elementary education. In documents 3 and 4 the Education Department, has directed the Government to take necessary action against the Army Public School, PRTC. Further, the Army Public School, has undertaken before Hon''ble High Court of Karnataka in W.P. No. 35431 of 2011, stating that the students studying at the school in question are not being forcefully discharged from the school. Once they have undertaken before the Hon''ble High Court of Karnataka, the question of debarring the students does not arise at all, hence it is contrary to Law and it is their own commitment.

Section 17(1) of the Right of Children to Free and Compulsory Education Act, 2009, no child shall be subjected to physical applicable or mental harassment. The Army Public School, PRTC, has clearly violated the Section 17(1) of the said Act, when the child is in physical punishment and mental harassment this commission having a jurisdiction and power u/s 31(1)(b) and 31(1)(c) of the Right of Children to Free and Compulsory Education Act, 2009, to inquire into the said complaint relating to Child's Right to Free and Compulsory Education Act.

Considering the facts and circumstances and perused the documents produced by the parents of the Army Public School, PRTC, have made out a prima facie case to grant an interim order and balance of convenience lies in favour of the parents of the Army Public School, PRTC. Further the prima facie it appears that the Army Public School has violated the Section 17(1) of the Right of Children to Free and Compulsory Education Act, 2009.

In view of the above discussion, I am of the opinion that the parents of the Army Public School, PRTC, have made out a prima facie. Hence I proceed to pass the following:

ORDER

I hereby directing the Army Public School (affiliated to CBSE, Delhi),. PARACHUTE REGIMENT TRAINING CENTRE, near, Mekhri Circle, J.C. Nagar, Bangalore-560 006, to readmit the students as debarred by the Army Public School, PRTC and permit them to attend the regular classes and to attend all their exams during the academic year 2012-2013. Further directing not to discriminate and humiliate any students.

Sd/- Chairperson, Karnataka State Commission for Protection of Child Rights,

Bangalore.

To:

The Principal, Army Public School (affiliated to CBSE, Delhi), PARACHUTE REGIMENT TRAINING CENTRE, Near Mekhri Circle, J.C. Nagar, Bangalore-560 006".

It is this which is under challenge in the present writ petition.

6. Incidentally, it is stated that in view of the pending proceedings before this Court, as well as before the City Civil Court, the students have been continued in the school and they are undergoing their course of study though without payment of fees.

7. The learned Counsel for the petitioner would point out that having regard to the statement of objects and reasons of the Commissions for Protection of Child Rights Act, 2005 (hereinafter referred to as the "2005 Act", for brevity) and given the Scheme of the Act, the present controversy could hardly be said to be within the jurisdiction of the Commission and hence seeks that the proceedings initiated by the Commission and the order under challenge be quashed.

8. While the learned Counsel appearing for the Karnataka State Commission for Protection of Child Rights would seek to resist the petition and would point out that there are complaints of several children being harassed, ill-treated, insulted, humiliated, mentally tortured by the Principal and Teachers of the petitioner-school and therefore in the interest of those children and to protect their rights, an obligation is cast on the school to protect the said children and therefore, the proceedings having been initiated, would not be out of place and is in accordance with law.

9. Therefore, in the light of the above facts and circumstances, the question, whether the action taken by the second respondent was warranted and whether the same would be within the scope of the provisions of the 2005 Act, arises for consideration in this petition.

The Act is intended to provide for the constitution of a National Commission and State Commissions for Protection of Child Rights and Children's Courts for providing speedy trial of offences against children or of violation of child rights and for matters connected therewith or incidental thereto. The United Nations General Assembly, at its summit, in the year 1990, had adopted a declaration on survival, protection and development of Children. India had acceded to the convention on the rights of the child on the 11th December, 1992. More particularly, in its declaration, India had made its position clear as follows:

"India

Declaration:

While fully subscribing to the objectives and purposes of the convention, realising

that certain of the rights of child, namely those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries, subject to the extent of available resources and within the framework of international co-operation; recognising that the child has to be protected from exploitation of all forms including economic exploitation; noting that for several reasons children of different ages do work in India; having prescribed minimum ages for employment in hazardous occupations and in certain other areas; having made regulatory provisions regarding hours and conditions of employment; and being aware that it is not practical immediately to prescribe minimum ages for admission to each and every area of employment in India--the Government of India undertakes to take measures to progressively implement the provisions of Article 32, particularly paragraph 2(a), in accordance with its national legislation and relevant international instruments to which it is a State Party".

Article 32 of the Convention reads as follows:

"1. States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article".

In the present case on hand, the children involved are students of a reputed school, whose parents have grievances against the school insofar as the adjustment of fee is concerned. The complaint of harassment, humiliation, torture etc., is incidentally made. This ought not to have provoked the Commission to proceed against the School Authorities as if the children were unprotected children, to whose rescue, the Commission should rush. The matter is pending, as indicated by the Commission, before this Court as well as the Civil Court. If there is any instance of such torture, harassment or humiliation, it is open for the parents of the children to raise those contentions in appropriate proceedings. Given the high ideals and the arduous task, which is before the Commission, in respect of innumerable children, who are unprotected and require the aid and assistance of the Commission, the Commission would do well to save its energies to protect those children. The instant case is hardly an instance, in which the Commission should intervene and to expend its energies.

As already stated, the Commission's responsibility towards the unprotected children should be the priority. Therefore, the entire proceedings initiated against the petitioner and the proposed action are misconceived.

Consequently, the petition is allowed. The impugned order and all further proceedings initiated against the petitioner stand quashed. This, however, does not absolve the petitioner of any wrong doing, if specific instances are brought to the attention of the Court, in which matters are pending, and if it should be established otherwise.